

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4365 OF 2016

Digambar s/o. Narayanrao Dhanade ..Petitioner

Vs.

The State of Maharashtra and ors. ..Respondents

Mr.R.D.Biradar, Advocate for petitioner

Mr.K.S.Patil, AGP for respondent nos.1 to 3

Mr.D.S.Mali, Advocate for respondent nos.4 and 5

Mr.A.V.Patil, Advocate for respondent no.6

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

DATE : DECEMBER 18, 2018

ORDER :

Mr.Biradar, the learned Counsel for the petitioner, submits that the petitioner had applied to respondent nos.4 and 5 – Institution, for appointment on compassionate ground on 19.12.2008. The father of the petitioner expired on 09.02.2007, while in service of respondent nos.4 and 5. However, his claim was not considered. The petitioner also made representations

on 09.02.2009 and 25.05.2009 to the Deputy Director of Education and the Education Officer, Zilla Parishad, respectively. However, respondent nos.4 and 5, by accepting a huge amount, appointed respondent no.6 in 2011. He submits the appointment given to respondent no.6 in 2011 was approved on the basis of false and frivolous documents. The Education Officer had made such statement before the Deputy Director of Education and the same is recorded by the Deputy Director of Education on 02.05.2015.

2. The learned Counsel for the petitioner further submits that respondent no.6 belongs to the State of Karnataka and he has been appointed in reserved category. He submits that respondent no.6 cannot take benefit, which is available for a resident of the State of Maharashtra. He, therefore, submits that the petitioner may be appointed to the said post by setting aside the appointment of respondent no.6. He also submits that the authorities may be directed to take action against respondent

no.6 for submitting false and frivolous documents bearing signatures of Shri. Goswami, Education Officer.

3. The learned AGP submits that the order of approval to the appointment of respondent no.6 is issued by the Education Officer. Mr.Mali, learned Counsel for the respondents – Institution, submits that respondent no.6 is appointed after following the due selection process.

4. Mr.Patil, learned Counsel for respondent no.6, submits that respondent no.6 belongs to a border village, which, after reorganisation of the States, became a part of the State of Maharashtra. He submits that respondent no.6 is appointed after following the due selection process and his appointment has been approved from the said date in 2011.

5. We have considered the rival submissions advanced on behalf of the parties.

6. Shri.Goswami, Education Officer, on 02.05.2015, had made a statement before the Deputy Director of Education that the order granting approval to the appointment of respondent no.6, does not bear his signature. However, upon perusal of the concerned file, he made a statement on 04.07.2015 before the Deputy Director of Education, confirming that he had signed and issued the order granting approval to the appointment of respondent no.6.

7. An affidavit is filed by the Office Superintendent working in the office of the Education Officer (Secondary) to the effect that the order of approval has been issued by the office of Education Officer under the order dated 21.01.2011.

8. The application of the petitioner, seeking appointment on compassionate ground was filed in the year 2008, whereas, the selection process had commenced earlier, pursuant to which respondent no.6 was appointed. The approval also has been granted to

the appointment of respondent no.6. In view of the statement of Shri.Goswami, Education Officer, made on 04.07.2015, that the order of approval to the appointment of respondent no.6 was issued by him and it bears his signature, the prayer made by the petitioner in this petition for taking action under Sections 340 and 195 of the Code of Criminal Procedure against respondent nos.4 to 6 for submitting concocted approval order, cannot be granted.

9. Respondent no.6 is belonging to a border village and after reorganisation of the states, his village has been merged in the State of Karnataka, as, earlier, it was forming part of the State of Hyderabad. After reorganisation of the States, some parts of State of Hyderabad were merged in the State of Karnataka and the State of Maharashtra. The Government has issued a Circular giving benefit of reservation to the such border villages.

10. Be that as it may, the appointment of respondent no.6 is earlier in point of time. Therefore, there is no propriety in disturbing the same. In earlier Writ Petition bearing No.11137 of 2014 filed by the petitioner, this Court had directed the Education Officer to keep the name of the petitioner in the waiting list of the persons seeking appointment on compassionate ground.

11. In view of the above, we direct that whenever vacancy arises of a Class-IV post in any Institution, the Education Officer shall direct the appointment of the petitioner on the said vacancy, as per the seniority of the petitioner in the waiting list of the persons seeking appointment on compassionate ground.

12. With these observations, the Writ Petition is disposed of. No costs.

[R.G. AVACHAT, J.]

kbp

[S.V. GANGAPURWALA, J.]